IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

MFA.No. 1012 of 2002()

OA.30/1999 of RAILWAY CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANTS: APPLICANTS:
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1. K.K. PUSHPAKARAN, KURUVATHU HOUSE,
KANNATTUKARA P.O., AYYANTHOLE VILLAGE,
TRICHUR.

2. A.S. RADHA, KURUVATHU HOUSE,
KANNATTUKARA P.O., AYYANTHOLE VILLAGE,
TRICHUR.

BY ADV. SRI.T.C.GOVINDA SWAMY
SRI.MARTIN G.THOTTAN

RESPONDENT: RESPONDENT:

UNION OF INDIA REPRESENTED BY
THE GENERAL MANAGER, SOUTHERN RAILWAY
PARK TOWN P.O., MADRAS-3.

BY ADV. SRI.K.V.SADANANDA PRABHU,SR.SC.RAILWAYS
SRI.ALEXANDER THOMAS, SC,RAILWAYS

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 26/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.1012 OF 2002

Dated 26th November, 2007

JUDGMENT

Koshy,J.

Appellants filed an application, O.A.No.30 of 1999, before the Railway Claims Tribunal, Ernakulam Bench claiming a compensation of Rs.4,00,00/= for the demise of their son in a train accident, under section 125 of the Railways Act, 1989 read with section 16 of the Railway Claims Tribunal Act. The application was dismissed for default as appellants were absent on one day of the posting dates. They filed an application for setting aside the order dismissing the original application for default. Rule 18 of the Railway Claims Tribunal (Procedure) Rules, 1989 reads as follows:

> "18. Action on application for applicant's default.-(1) Where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned, the applicant does not appear (when the application is called) for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.
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> (2) Where an application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the

application and restore the same;

Provided, howerver, where the case was disposed of on merits the decision shall not be re-opened except by way of review."
(underlining by us for emphasis)

The restoration application was filed by the appellants with a delay of 20 days with an application for condonation of delay. According to the appellants, section 18(3) of the Railway Claims Tribunal Act vests the Tribunal with a power as is vested in a civil court under the Code of Civil Procedure while dealing with an application to set aside any order of dismissal of any application for default. Hence, the Tribunal can condone the delay. Section 18(3) of the Railway Claims Tribunal Act reads as follows:

"**18. Procedure and powers of Claims Tribunal**.- xx xx xx

(3) The Claims Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

xx xx xx

(h) setting aside any order of dismissal of any application for default or any other passed by it ex parte;

(i) any other matter which may be prescribed."

Tribunal dismissed the application relying on the decision of the Apex Court in **Birla Cement Works** v. **G.M., Western Railways and another** ((1995) 2 SCC 493). Tribunal held that since it is not a civil court, it has no power to condone delay beyond the time fixed in the rules.

2. In **Birla Cement's** case (supra), relied on by the Tribunal, a claim was filed to refund the excess freight paid under Section 78-B of the Indian Railways Act, 1890 corresponding to Section 108 of the Railways Act, 1986. Section 78-B of the Act provides that a person shall not be entitled to refund of overcharge or excess payment in respect of animals or goods carried by Railway unless his claim to the refund has been preferred in writing by him or on his behalf to the Railway Administration to which the animals or goods were delivered to be carried by Railway etc. within six months from the date of the delivery of the animals or goods for carriage by Railway. But, application was filed after six months. Section 78-B prescribes only time limit for filing an application before the Railway Administration and not before the court, Tribunal or quasi judicial authority. Under Section 13(1)(b) of the Railways Claims Tribunal Act, 1987 if the amount is not paid by the Railway Administration,

claim can be filed before the Tribunal. Section 13(1-A) is regarding claims for compensation payable by the railway administration under Section 124-A of the Railways Act, 1989. Section 17 provides for time of limitation for filing application before the Tribunal and Section 17(1)(c) provides that claim under Section 13(1)(b) can be filed within three years from the date on which the fare or freight is paid to the railway administration. Sub.section (2) of section 17 of the Railway Claims Tribunal Act , 1987 provides that Tribunal has got power to condone the delay for sufficient cause. Section 17 of the Railsway Claims Tribunal Act, 1987 reads as follows:

> "**17. Limitation.- (1**) The Claims Tribunal shall not admit an application for any claim-
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> (a) under sub-clause (i) of clause (a) of sub-section (1) of Section 13 unless the application is made within three years from the date on which the goods in question were entrusted to the railway administration for carriage by railway;
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> (b) under sub-clause (ii) of clause (a) of sub-section (1) (or, as the case may be, sub-section (1-A) of Section 13 unless the application is made within one year of occurrence of the accident;
>
> (c) under clause (b) of sub-section (1) of Section 13 unless the application is made within three years from the date on which the fare or freight is paid to the railway administration:

> Provided that no application for any claim referred to in sub-clause (i) of clause (a) of sub-section (1) of Section 13 shall be preferred to the Claims Tribunal until the expiration of three months next after the date on which the intimation of the claims has been preferred under Section 78-B of the Railways Act.
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> (2) Notwithstanding anything contained in sub-section (1), an application may be entertained after the period specified in sub-section (1) if the applicant satisfies the Claims Tribunal that he had sufficient cause for not making the application within such period."

For setting aside an order dismissing an application for default, 30 days time is fixed under the Railway Claims Tribunal (Procedure) Rules. It is not stated that it cannot be extended in any case. In any event, **Birla Cement's** case (supra) is not applicable in this case as court was considering application of Section 17(1) of the Limitation Act. Contention of the applicants was that excess fare was paid in consequence of a mistake and limitations prescribed under the Act will apply only from the date of finding out the mistake and relied on Section 17(1)(c) of the Limitation Act. Section 17(1) of the Limitation Act starts with the following sentence:

> "Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,:"

It is clear that Section 17(1) is applicable only if limitation is prescribed by the Limitation Act and not under the special law. Hence there is a specific exclusion of application of Section 17(1) of the Limitation Act regarding applications filed under special law. Here, we are considering application of Section 5 of the Limitation Act and not Section 17(1).

3. In **Mukri Gopalan** v. **C.P.Aboobacker** (AIR 1995 SC 2272= 1995(2) KLT 205) it was held by the Supreme Court that appellate authority constituted under the Kerala Buildings (Lease and Rent Control) Act has got power to condone the delay under Section 5 of the Limitation Act as appellate authority is not a persona designata. Even though it is not a civil court, it has got all the powers of the civil court and in functioning as a court. It is also observed that there may be situations wherein even courts constituted under special or local law which are governed by Civil Procedure Code may have prescribed period of limitation for application under such acts and in the absence of any specific exclusions, in such cases also Limitation Act will apply. It was held as follows:

> "There may be situations, wherein even courts constituted under special or local law which are governed by Civil Procedure Code may have prescribed period of limitation for suit, appeal or application under such special or local law and for which provision

> might not have been made under schedule to the Limitation Act and only for such courts an express provision has to be made for applying Ss.4 to 24 of the Limitation Act as found in second part of S.29(2) but for which such a machinery may not be available for computing such periods of limitation even though by a legal fiction S.3 of the Limitation Act would apply. It is difficult to countenance this submission. The express language of S.29(2) clearly indicates that such special or local law must provide for period of limitation for suit, appeal or application entertainable under such laws and for computing period of limitation under such special or local law the Legislature has made available the machinery of Ss.4 to 24 inclusive as found in Limitation Act. Nowhere it is indicated that as per S.29(2) the courts functioning under such special or local law must be governed whole hog by Civil Procedure Code."

In that case, Supreme Court also rejected the contention that section 29(2) of the Limitation Act is applicable only if special law permits the filing of application before civil court and not to the authority or Tribunal constituted under the special law. It was held as follows:

> "..... Before parting with the discussion on this question we may also refer to one submission of Shri.Nariman. He submitted that Sections 4 to 24 of the Limitation Act would apply to Civil Courts as duly constituted under the Civil Procedure Code and if that is so even if they are to be made applicable to suit, appeal or application governed by periods of limitation prescribed by any special or local law, they necessarily

> require such suit, appeal or application to be filed under special or local law before full-fledged Civil Courts as otherwise Sections 4 to 24 by themselves would not apply to them. It is difficult to agree. It has to be kept in view that Section 29(2) gets attracted for computing the period of limitation for any suit, appeal or application to be filed before authorities under special or local law if the conditions laid down in the said provision are satisfied and once they get satisfied the provisions contained in Sections 4 to 24 shall apply to such proceedings meaning thereby the procedural scheme contemplated by these Sections of the Limitation Act would get telescoped into such provisions of special or local law. It amounts to a legislative shorthand. Consequently, even this contention of Shri. Nariman cannot be countenanced."

Section 29(2) of the Limitation Act reads as follows:

> "29. **Savings**.-(1) xx xx xx
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> (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

It is clear that for attracting Section 29(2), three conditions are to be fulfilled:

1) There must be a provision for period of limitation under any

special law or local in connection with any suit, appeal or application.

2) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the Schedule to the Limitation Act.

3) There should not be any express provision in the special or local law contrary to the provisions in Ss. 4 to 24 of the Limitation Act.

If these three conditions are satisfied, Ss.4 to 24 will be applicable in view of S.29(2). In this case, period of limitation is provided under the special law. Time fixed for filing an application for setting aside an order dismissing an application for default is 30 days. The above period is different from the period prescribed under the Schedule to the Limitation Act and there is no provision in the special law against application of Ss.4 to 24 of the Limitation Act or against condonation of delay. Therefore, applying the principles laid down in **Mukri Gopalan's** case (supra) in view of section 29(2), section 5 of the Limitation Act enables the Tribunal constituted under special law to condone the delay.

4. Apex Court in **P.Sarathy** v. **State Bank of India** ((2000) 5 SCC 355) it was held that for application of section 5 of the Limitation Act, court need not be a civil court, but, it will be sufficient if the authority or tribunal have trappings of court. Apex Court has considered the question regarding application of S.14 of the

Limitation Act in a proceeding before the Deputy Commissioner of Labour who is notified as appellate authority under the Shops and Establishments Act. It was held that time spent before Shop Appellate Authority can be excluded for computing the period of limitation in view of S.14 of the Limitation Act. We quote paragraphs 12 & 13 of the above judgment herein below:

> "12. It will be noticed that S.14 of the Limitation Act does not speak of a "Civil Court" but speaks only of a "court". It is not necessary that the court spoken of in S.14 should be a "Civil Court". Any authority or tribunal having the trappings of a court would be a "court" within the meaning of this section.
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> 13. In Thakur Jugal Kishore Sinha v. Sitamarhi Central Co-op. Bank Ltd. (A.I.R. 1967 S.C. 1494) this court, while considering the question under the Contempt of Courts Act, held that the Registrar under the Bihar and Orissa Co-operative Societies Act was a court. It was held that the Registrar had not merely the trappings of a court but in many respects he was given the same powers as was given to an ordinary civil court by the Code of Civil Procedure including the powers to summon and examine witnesses on oath, the power to order inspection of documents and to hear the parties. The Court referred to the earlier decisions in Bharat Bank Ltd. v. Employees (AIR 1950 SC 188); Magbool Hussain v. State of Bombay (AIR 1953 SC 325) and Brajnandan Sinja v. Jyoti Narain (AIR 1956 SC 66). The Court approved the rule laid down in these cases that in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a

> definitive judgment which has FINALITY and AUTHORITATIVENESS which are the essential tests of a judicial pronouncement."

5. In **Shaik Saidulu** v. **Chukka Yesu Ratnam** (AIR 2002 SC 749) it was held that section 5 of the Limitation Act will apply in an application before the Election Tribunal as there is no specific exclusion of Section 5 of the Limitation Act in the Hyderabad Municipal Corporation Act, 1956. A Full Bench of this court as early as in 1980 in **State of Kerala** v. **Syamala Thamburatti** (1980 KLT 34 (F.B)) held as follows:

> "4. In the light of the above discussion it has to be held, and we hold, that Ss.4 to 24 (inclusive) of the Limitation Act, 1963, shall, to the extent to which these provisions have not been expressly excluded by a special or local law, apply for the purpose of determining any period of limitation prescribed for any suit, appeal or application by such special or local law. There is no provision in the Act which expressly excludes any of the provisions, Ss.4 to 24 of the Limitation Act, 1963, and so, the period of 60 days limitation prescribed in S.8A has to be computed by applying Ss.4 to 24 (inclusive) of the Limitation Act, 1963."

In **Brajnandan Sinha** v. **Jyoti Narain** (AIR 1956 SC 66) it was held that in order to constitute a `court' in the strict sense of the term, essential condition is that apart from the trappings of a court, it has

power to give a decision or definite finding which is authoritatively equivalent to a judgment pronounced. Orders passed by the Railway Tribunal is equivalent to judgments pronounced. In **Sathish Babu** v. **State of Kerala** (2000 (3) KLT 551) this court held that Forest Tribunal is a court and in view of section 29(2), sections 2 to 24 of the Limitation Act will be applicable. In **Duroflex Ltd.** v. **Johny Mathew** (2007(1) KLT 865) it was held by this court that when disposing the application under section 111 of the Companies Act, Company Law Board has to make a judicial decision and hence it is a court and section 5 of the Limitation Act will apply.

6. Rule 18 of the Railway Claims Tribunal (Procedure) Rules prescribe the time limit of 30 days in filing an application for setting aside an order dismissing the application for default. But, there is no specific exclusion or prohibition in the section for extending the time. Hence, considering the mandate of Section 29(2) of the Limitation Act, Section 5 of the Limitation Act is applicable. It is true that before **Mukri Gopalan's** case (supra) there were large number of decisions to the effect that Section 5 of the Limitation Act is applicable only to a civil court and not to courts or tribunals or quasi judicial authorities which has though all trappings of the court but not being a civil court. Now it has been

consistently held that in the absence of specific exclusion or prohibition, if limitation is prescribed in a special law for filing an application, by virtue of section 5 read with section 29(2) of the Limitation Act, tribunal which has all the trappings of court can condone delay on sufficient reasons. This is all the more applicable to the Railway Claims Tribunal in setting aside any order of dismissal for default of the applicant in view of section 18(3) of the Railway Claims Tribunal Act, 1987.

7. In view of the above discussion, we are of the opinion that section 5 of the Limitation Act is applicable and Tribunal should have condoned the delay as sufficient reasons are given for condoning the delay. Here, the son of the claimants died in an accident and application was filed for compensation before the Tribunal. It is true that on one day the claimants were absent and the application was dismissed for default. By filing an application for setting aside the order dismissing the application in default and for restoring the matter, the provisions of the Limitation Act for filing application will not be applicable. There is a time limit of 30 days in filing the application. Therefore, it has to be filed within 30 days. If sufficient cause is made out, Tribunal has got power to condone the delay under Section 5 of the Limitation Act and liberal approach has to be

adopted by the Tribunal. Here, adequate reasons are given by the appellants for condoning the delay. Therefore, the Tribunal ought to have condoned the delay. Therefore, we condone the delay in filing the application for setting aside the order dismissing the application for default and the matter is remanded to the Tribunal for deciding the question on merits. We are not expressing any opinion regarding the merits of the matter. Parties shall appear before the Tribunal on 14.1.2008.

The appeal is allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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